

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

INDUSTRIAL COMPONENTS OF LATIN
AMERICA, INC.,

Plaintiff,

v.

CASE NO. 8:18-cv-1885-T-02AAS

SYNTRON MATERIAL HANDLING, LLC,

Defendant.

ORDER

The Court has now reviewed the entire record and is prepared to rule. The hearing set for next week is cancelled as unnecessary. The Court enters this Order on docket 8 (Defendant’s Motion to Dismiss) and docket 9 (Defendant’s Motion for Summary Judgment).

Concerning the Motion to Dismiss Count II, the Court denies without prejudice. Defendant may reassert a motion for summary judgment as to this statutory issue. In a precatory note to Plaintiff, this Court has an initial hesitancy to strike as unconstitutional part of a foreign state’s statute to permit the statute (once “amended” by this Court’s “blue pencil”) to be used as a sword.

Concerning the Motion for Summary Judgment, Defendant seeks to bar the claim due to accord and satisfaction. In other words, Defendant contends Plaintiff

agreed to take the \$24,320.94 check as full settlement of the debt. A letter transmitting the check “representing the final commission payment owed to you per our calculations” is insufficient to establish, as a matter of law and fact at this early juncture, a final accord and satisfaction.

Plaintiff points out that discovery has yet to begin in this matter. At this stage, viewing the record in a light most favorable to the nonmovant, Defendant has not shown itself entitled to prevail as a matter of law and uncontested fact under the doctrine of accord and satisfaction. *Heuser v. Sunbelt Enterprises, Inc.*, 537 So.2d 1071, 1074 (Fla. 1st DCA 1989). The Motion for Summary Judgment is denied without prejudice.

It is therefore **ORDERED AND ADJUDGED** that Defendant’s Motion to Dismiss (Dkt. 8) and Defendant’s Motion for Summary Judgment (Dkt. 9) are denied without prejudice.

DONE AND ORDERED at Tampa, Florida, on December 11, 2018.

s/William F. Jung
WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record